

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Elenita Utley,

Bankruptcy Case No.: 10-82300

Soc. Sec. Nos. xxx-xx-2459 & xxx-xx-6333

Mailing Address: 1608 Nixon Street, , Durham,
NC 27707-

Debtors.

Elenita Utley,

Plaintiffs, A.P. No.: _____

**United Guaranty Residential Insurance
Company,**

Defendant.

COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by United Guaranty Residential Insurance Company.
3. The Plaintiffs are filed this bankruptcy case on December 21, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant United Guaranty Residential Insurance Company is a corporation and/or a partnership with an office and principal place of business located at Post Office Box 601860, , Charlotte, NC 28260-1860 and/or Post Office Box 20237, , Greensboro, NC 27420-0327 .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiffs own real property located at 1608 Nixon Street, Durham, NC 27707. The legal description of the property is as follows:

Southeast corner of lot No. 12, running thence with the line of said lot n 12 deg. 03' East 154

feet to a stake in the south property line of Nixon Street; thence along the south property line of said street and along the arc of a circle to the left with a radius of 236.68 feet in an eastern direction 70 feet to the beginning. The tax map or parcel ID No. is: 132778

6. American General holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$71,330.00. This Deed of Trust originally given to and held by Equity One , Incorporated D/B/A Equity One Mortgage Services, Inc. This Deed of Trust was recorded on March 11, 2008, in Book 5893 at Page 651, Durham County Registry of Deeds.
7. United Guaranty Residential Insurance Company holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$19,738.97. This Deed of Trust originally given to and held by Bank of America. This Deed of Trust was recorded on June 12, 2000, in Book 2850 at Page 43, Durham County Registry of Deeds.
8. The fair market value of the said property is not greater than \$63,908.00
9. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with United Guaranty Residential Insurance Company, secured by a second Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.
10. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, the Plaintiffs' escrow account.
11. Pursuant to In re Bradsher, 2010 WL 545967 (Bankr. M.D.N.C. February 16, 2010), such additional collateral renders 11 U.S.C. § 1322(b)(2) inapplicable.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by United Guaranty Residential Insurance Company, which is secured by a second Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order United Guaranty Residential Insurance Company to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: April 21, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiffs

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